

Global Language Services

Translations · Interpreting DTP · Localization

KERN Corporation The Helmsley Building 230 Park Avenue, Suite 1517 New York, NY 10169

Tel. (212) 953 2070 Fax (212) 953 2073 kern.ny@kerntranslations.com

New York

New York

SS.:

www.e-kern.com

County of:

State of:

CERTIFICATE OF ACCURACY

IT IS HEREBY CERTIFIED, that KERN Corporation, a corporation organized and existing under the laws of the State of New York, is professionally engaged in the rendering of foreign language translation services; that it has translated the following document(s)

LETTER DATED MARCH 3, 2005 REGARDING AF-CAP, INC. V. REPUBLIC OF CONGO

from the FRENCH language into the ENGLISH language and that the said translation is a true and correct rendering of the said document to the best of our knowledge and belief.

Signed by:

Subscribed to before me this

JOY N. WILTERMUTH NOTARY PUBLIC, State of New York No. 01WI - 6093589

Qualified in New York County My Commission Expires June 2, 2007

EXHIBIT C

Kem Corporation

The Helmsley Building 200 Park Avenue, Suite 1517 New York, NY 10160 Tel: 212-009-2070 Fex: 212-963-2073

San Francisco: The Russ Building - 235 Montgomery Street, Suite 946 - San Francisco, CA 94104 Tel. (415) 433 5376 - Fax (415) 433 5377 - kern.sl@kerntranslations.com

London: Tel. 011 44 (20) 78 31 56 00 - Frankfurt: Tel. 011 49 (59) 75 60 73-0 - Berlin: Tel. 011 49 (30) 24 72 12 50 - Perlis: Tel. 011 33 (1) 53 93 85 20 Zurich: Tel. 011 41 (1) 2 61 1160 - Hong Kong: Tel. 011 (852) 28 50 44 55 - Amsterdam: Tel. 011 31 (20) 6 39 01 19 - Lyon: Tel. 011 33 (4) 783 783 73

Case 1:05-mc-00156-SLR

MINISTER OF FOREIGN AFFAIRES AND FRANCOPHONY

REPUBLIC OF CONGO Unité - Travail - Progrès

CABINET

MAEF 0744 CAB.SP.

Brazzaville, 03 March 2005

MINISTER OF STATE

Re: Republic of Congo v. Af-Cap, Inc.

Dear Judge:

I refer to the order issued by this court on 22 February 2005 (the "Turnover Order"), which provides, inter alia:

- "The Court hereby takes possession and control of all future royalty obligations owed to the Congo under the Convention [for the production of oil and gas in the Congo dated May 25, 1979] and this Order shall constitute a judgment lien upon the Congo's property interests in, and its rights to receive payment of, its royalty share" from oil companies operating in the Congo under a concession granted by the Congo in the Convention;
- "The Court further orders the Congo to turn over such royalty payments into the registry of the Court and to execute...[a] letter of instruction... to the parties who pay royalties under the Convention to the Congo revoking prior instructions regarding payment of the royalty...."

This suit was initiated over four years ago with a view to persuading United States courts to authorize seizure of the Congo's rights to mining royalties, which it collects within its own territory, in satisfaction of a debt purchased by a creditor without any right to said mining royalties. The Congo has strongly objected to this litigation, which is unfounded. It is premised on the erroneous notion that an American court may transfer the right of a sovereign nation—the Republic of Congo—to dispose of its resources within its own borders. The Republic of Congo has thus far endeavored to cooperate with United States judicial authorities in the hope that United States courts would recognize their obligation to respect the Congo's sovereignty, as is mandated not only under Congolese and international law, but under United States law as well.

In light of the judgments of this Court and the Court of Appeals for the Fifth Circuit, the Congo is constrained to protest in the strongest possible terms the failure to

respect its sovereign rights and the resulting judicial measures that purport to dispossess the Congo of economic rights comprising its national patrimony and principal source of export revenue. It is an established principle of the law of nations that every state exercises full and permanent sovereignty over its natural resources and exclusive authority to control the economic exploitation thereof. The Congo's rights to the mining royalties within its territory are subject to its exclusive jurisdiction and sovereignty, which cannot be subordinated to the judicial measures of another state.

The Turnover Order issued by this Court is a clear violation by the United States of international law which recognizes the right for any sovereign State to exercise authority and control over its natural resources within its national territory. Such actions impact negatively on the relations between the United States and the Congo, undermining the concerted mutual efforts of both nations to encourage private United States entities to invest in the Congo, in particular in the oil sector. This unfortunate development requires the Congo to reassess its relations with the United States, particularly where other sources of trade and investment such as Canada, Europe, India and China continue to respect the sovereignty of the countries with which they maintain an economic relationship.

The Turnover Order is unenforceable in the Congo, and cannot supersede the Congo's sovereign authority to prescribe and enforce its own laws within its own territory. Regretfully, the Congo must hereby advise the Court that, for the reasons stated, the Congo will not implement the Turnover Order.

Please accept, Your Honor, the expression of my most distinguished consideration.

[seal: Minister of Foreign Affaires and Francophony Cabinet Republic of Congo]

[signature]

Rodolphe Adada

Hon. Sam Sparks
United States District Judge
United States District Court for
The Western District of Texas
Austin, Texas

U.S.A.

copy: Hon. William H. Taft, IV
United States Department of State

MINISTERE DES AFFAIRES ETRANGERES ET DE LA FRANCOPHONIE République du Congo Unité – Travail - Progrès

CABINET

MAEF 0 7 4 CABSP.

Brazzaville, le 0 3 MARS 2005

LE MINISTRE D'ETAT,

Objet : République du Congo c. Af-Cap.Inc

Monsieur le Juge,

Je me réfère à l'Ordonnance de votre tribunal rendue le 22 février 2005 (the «Turnover Order », qui décide notamment :

- * «The Court hereby takes possession and control of all future royalty obligations owed to the Congo under the Convention [for the production of oil and gas in the Congo dated May 25, 1979] and this Order shall constitute a judgment lien upon the Congo's property interests in, and its rights to receive payment of, its royalty share* from oil companies operating in the Congo under a concession granted by the Congo in the Convention;
- "The Court further orders the Congo to turn over such royalty payments into the registry of the Court and to execute...[a] letter of instruction ...to the parties who pay royalties under the Convention to the Congo revoking prior instructions regarding payment of the royalty...

Cette procédure a été initiée par les demandeurs il y a plus de quatre ans dans le but de convaincre les tribunaux américains d'autoriser la saisie des droits du Congo sur la redevance minière qu'elle perçoit sur son propre territoire, en paiement de droits d'un créancier au titre d'une dette du Congo sans rapport avec un droit quelconque sur cette redevance minière. Le Congo a vigoureusement contesté cette action judiciaire, laquelle est sans aucun fondement. Elle repose sur l'hypothèse erronée qu'un tribunal américain pourrait aliéner le droit d'un Etat souverain, la République du Congo, de disposer de ses ressources à l'intérieur de son propre territoire. La République du Congo a jusqu'à présent coopéré avec les autorités judiciaires américaines dans l'espoir que les tribunaux américains admettraient leur obligation de respecter la souveraineté du Congo, comme le leur impose le droit international, le droit congolais ainsi que le droit des Etats-Unis d'Amérique.

Compte tenu des jugements rendus par votre tribunal et par la Court of Appeals de la Court de la Court

Le Turnover Order émis par votre tribunal constitue une violation patente de la part des Etats-Unis du droit international, lequel consacre le droit pour chaque Etat souverain de gérer ses ressources naturelles à l'intérieur de son territoire national. De telles actions affectent négativement les relations entre les Etats-Unis et le Congo et les efforts mutuels de ces deux nations pour encourager les sociétés américaines à investir au Congo, en particulier dans le domaine pétrolier. Ce regrettable développement met le Congo dans l'obligation de réexaminer ses relations économiques avec les Etats-Unis en tenant compte notamment que d'autres pays partenaires commerciaux, au Canada, en Europe, en Inde et en Chine respectent la souveraineté des pays avec lesquels ils entretiennent des relations économiques.

Le Turnover Order est de nul effet au Congo et ne saurait prévaloir sur l'autorité souveraine de notre pays d'appliquer ses propres lois sur son territoire. J'ai donc le regret de vous informer que, pour les raisons indiquées dans la présente lettre, la République du Congo rejette le Turnover Order.

Veuillez agréer, Monsieur le Juge, l'expression de ma considération distinguée.

Roddine ADADA.

Hon, Sam Sparks
United States District Judge
United States District Court for
The Western District of Texas
Austin, Texas

U.S.A.

THE PARTY OF THE P

Copie : Hon. William H. Taft, IV

United States Department of State

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

2005 AP -6 AM ID: 44
VESTERN DET NICHOLE AAS
U.S. CLERK'S OFFICE AAS

AF-CAP, INC.

-VS-

Plaintiff,

x 1411111

Case No. A-01-CA-321-SS

THE REPUBLIC OF CONGO,

Defendant.

ORDER

BE IT REMEMBERED on the 1st day of April 2005, the Court called the above-styled cause for a hearing on Plaintiff Af-Cap, Inc.'s ("Af-Cap") Motion for Issuance of a Show Cause Order [#129], and the parties appeared through counsel. On February 22, 2005, the Court entered a turnover order against Defendant Republic of Congo ("the Congo"), in which the Congo was ordered to execute, within three days of receiving the Court's order, certain letters of instruction addressed to third parties (specifically, CMS Nomeco Congo Inc., the Nuevo Congo Company, and Nuevo Congo, Ltd.) regarding its right to receive payment of royalty obligations under a May 25, 1979 Convention for the production of oil and gas. The purpose of the letters was to redirect the Congo's interest in the Convention royalty obligations to the Clerk of this Court until a judgment held by Af-Cap against the Congo was satisfied. Because the Congo refused to execute the instruction letters, the Court subsequently ordered the Congo to appear at a hearing on April 1, 2005, at which time its authorized representative would be required to execute the letters of instruction and to show cause why the Congo should not be held in contempt of Court. No representative of the

In 1979, the Congo issued a permit to drill offshore to its state-owned oil company, the Societe Nationale de Petrol du Congo ("SNPC"). On May 25, 1979, in order to exploit the permit, the Congo and SNPC entered into a joint venture with various oil companies to produce oil and gas ("the Convention").

Congo capable of signing the letters of instruction appeared before the Court. However, counsel for the Congo did appear, both in person and by telephone, to argue on its behalf. Having considered the pleadings filed by the parties, the arguments of counsel at the hearing, the relevant law, and the case file as a whole, the Court now enters the following:

In light of the Congo's failure to comply with the February 22, 2005 Turnover Order entered by this Court, Af-Cap urges the Court to grant further appropriate relief to enforce the Court's Turnover Order. Although, in its papers, Af-Cap proposed multiple, alternative forms of relief for the Court's consideration (including contempt sanctions), at the hearing, Af-Cap took the position that an order pursuant to Rule 70 of the Federal Rules of Civil Procedure would be the most effective and efficient means of enforcing this Court's Turnover Order.

Under Rule 70, Af-Cap urges the Court to enter an order directing the Clerk of this Court to sign the required letters of instruction on the Congo's behalf. Rule 70 provides, in pertinent part:

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party.

FED. R. CIV. P. 70. Under the plain language of the rule, the Court may order a third person to do the act which the Congo refuses to do. Other courts have granted similar relief. For instance, in a case arising in the Seventh Circuit, the Clerk of the District Court for the Northern District of Illinois executed real estate deeds after the defendant refused to comply with the district court's order requiring him to execute the deeds. Varone v. Varone, 392 F.2d 855, 856 (7th Cir. 1968). Similarly, in United States v. Fitzgerald, 109 F.3d 1339 (8th

Cir. 1997), the district court ordered the United States Marshal to convey a deed on foreclosed property belonging to the defendant in the case after the defendant refused to make the conveyance himself. *Id.* at 1341. In both cases, the Court was able to get around the recalcitrance of the individual defendant by ordering its own designee to perform the required ministerial act.

The Congo, for its part, indicated at the hearing it has no particular objection to the specific Rule 70 relief sought by Af-Cap. Instead, the Congo has made only general objections to the Court's entry of further relief in favor of Af-Cap, which are largely based on its continuing objections to the turnover order already entered in this case. First, the Congo argued the decision by the Fifth Circuit that the underlying property in this case is located in the United States was incorrect. Apparently convinced the Supreme Court would grant a writ of certiorari, the Congo urged the Court to await the outcome of its appeal of the Fifth Circuit's decision prior to taking further action. According to the Supreme Court's official website, on April 4, 2005, the Supreme Court denied the Congo's petition for certiorari. Thus, there is no doubt the Fifth Circuit's mandate will remain the final word on the location of the property at issue in this case.²

Second, the Congo argues the Court's Turnover Order itself is not entitled to legal force and effect because of sovereignty considerations and the act of state doctrine.

The Congo has also argued '[t]his Court's turnover order directly against the Congo...lacks even the tenuous basis on which the Fifth Circuit deemed the property 'in the United States.'" Def.'s Opp. to Mot. for Issuance of a Show Cause Order at 4. The Congo's position is apparently that since the Fifth Circuit focused its opinion on the garnishment relief sought in A-01-CA-100-SS ("the 100 case"), rather than the turnover relief sought in this case, see Af-Cap, Inc. v. Republic of Congo, 383 F.3d 361, 373 (5th Cir. 2004), its holding is somehow inapplicable to the latter form of relief. What the Congo fails to recognize, however, is that the Fifth Circuit's consolidation of the appeals of those two actions means the Fifth Circuit's conclusions about the location of the property are binding in both the 100 case and this case. See id. ("We also hold that the situs of these obligations is the United States.").

However, these arguments have already been made and rejected in connection with both the Court's initial issuance of the Turnover Order and the Court's denial of the Congo's recent motion for a stay. The Court sees no need to separately address these arguments again here.

Third, the Congo argues the act of state doctrine independently precludes the issuance of contempt sanctions against it. However, since the relief now urged by Af-Cap is an alternative to a contempt sanction, the Court need not address the merits of the Congo's last argument.

Accordingly:

IT IS ORDERED that the Clerk of the Court is hereby appointed pursuant to Rule 70 of the Federal Rules of Civil Procedure and directed to execute the letter of instruction appended to the Court's Turnover Order of February 22, 2005. One executed original of the letter shall be placed in the Court's file. Copies of the executed letter shall be served on counsel for the Congo. One executed original of the letter shall be delivered by the Clerk to Steve McConnico, counsel for Af-Cap. One executed original of the letter shall be delivered to Guy Lipe, counsel for CMS Nomeco Congo Inc., the Nuevo Congo Company, and Nuevo Congo, Ltd. The execution of the instruction letters by the Clerk shall have like effect as if done by the Congo as authorized by Rule 70.

SIGNED this the _____ day of April 2005.

-4-

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

FILED

APR 1 1 2005

AF-CAP, INC.

Plaintiff.

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

-VS-

Case No. A-01-CA-321-SS

THE REPUBLIC OF CONGO,

Defendant.

CMS Nomeco Congo, Inc. Nuevo Congo Company Nuevo Congo, Ltd. c/o Their Counsel Mr. Guy S. Lipe Vinson & Elkins, L.L.P. 1001 Fannin, Suite 2300 Houston, Texas 77002-6760

Ladies and Gentlemen:

Pursuant to the Turnover Order entered by the United States District Court for the Western District of Texas, the Republic of Congo ("Congo"), on its own behalf or though its lawfully authorized designee, hereby demands, directs, and elects that you pay into the registry of the United States District Court for the Western District of Texas in cash all mineral royalty due under the Joint Operating Agreement ("JOA") dated May 25, 1979 to the Republic of Congo in accordance with Articles 7 and 4.11, respectively, of the Convention regarding Marine I Field dated May 25, 1979 ("the Convention") and the JOA. Any previous elections with respect to the payment of such royalty in kind are hereby revoked.

The amounts to be paid pursuant to the preceding paragraph shall include all royalty amounts currently owed by either you, your successors and assigns, or your affiliates, to the Congo pursuant to the JOA and Convention in respect of all periods beginning ninety days from the date of this letter. The payments made to the registry of the Court shall, to the extent thereof, be considered by the Congo as fulfillment of your obligations, and shall be treated by the Congo as payment of the royalty.

EXHIBIT E

CC. Fox

This payment instruction shall be irrevocable except that is shall expire when payments to the Court's registry are no longer required by the terms of the attached Turnover Order entered by the United States District Court for the Western District of Texas.

By order of the Court,

William G. Putnicki,

Clerk of Court

Dated:



L'es deux ett sing UNDM DU PEUPLE CONGOLAIS



Paradevant nous, Norbert SESMA, Président du Tribunal de Grande Instança de Pointe-Notre, temant sudience publique des référés en notre Cabinet ets qui pulsies de Justice de cette ville:

Apsinté de Paitre Pare Elles Greffier en Chef des Chastres Civilente des Pribunes.

(/u la requeste en date à Pointe-Moire du C2 Julitet 2005 de la Dépublique de Congo, Ministère des Hydroparbures, evant plus conseilé, Martines liens Journes DEROUT NOUTE et Nudia MACOUSO, Average 1 la cour à 1918? Pointe-Moire;

Attendo de alle espose à l'appai de ce l'appai de se l'appaire de missellos describis de la light de l

the let imposents due to the lighter to provide a complete and in the letter of the complete and in the co

halo que ces déciséens de gosrafent kura astrution en ligrafillous du lons

que l'article 50 de l'Aste Uniforme our les projedurés simplifices de reconvenent et dus voies d'extention dispose que les bièses desirés en maistrantes por le loi pationale de chaque tité Parile ne mont jos suspentibles de mainis de mainis de mainis per les lières

que la sainie ordonnée par la furidiction matrichine est contraire à l'ordre Public international et à la pouvernimeté de la République du Congo en se qu'elle vine des redevances fiscales, par nature insaintagables, et porte atteinte à la République du Congo dans L'exercise de su souvernimeté fiscale.



quiminal, il sied, la question de livraison des parte de pétrole brut de

EXHIBIT F

la Sépublique du Congo ditenues par les sociétés CRG poince loc, dueto Congo conjunt de Suero Doggo Lieited Stant urgants et Somportant un filett dectate, d' avionnes nur minate que ses conjuites liggins à tent operateur distinct par la stantique de Congo lesuités parte de patrole brus;

Enter prodefinance de ce sui recoldaria liapabilique de comes estilité en estata disperso hame des quientarias que les licularias composar constitue de reconstruction de l'appendique de l'ap

The state of part and principles on the first pulling and the state of the state of

Trace decrees a factor of the state of the s

que la Société des manco étant manifestament un éjore eux reprédintes constitues des des les partitues constitues de la felles de la felles constitues de la felles de la fel

Cas lightings conditions and the bond of bonds in bonds in the conditions of the conditions of the conditions and the conditions of the co

quill rescort de ce texte que l'exequator n'est requis que pour les décisions étrengères exécutées sur le térritoire Congolais;

Que mor, les décisions de la Cour de District des États-Unic, District de l'Eurest du Texas, ent été renduse, signifiées et érécutées sur états-Unic,

Que seuls les effets de cette exécution opèrée aux Etata-Unia sont ressentis au 009/vgm



Congo à travare la sociáta CHE MONECO CORGO INC.

Que la République du Congo per la Spoiste Assiraine Ar-Cap Dict

4-

que unha cea conditions, la République du Congo ne pout veleplement opposer à un orientites de respensar de formolité devrequelle comme si elle extentell su décision sur le territoire composers;

Que la l'épublique du Compo complènd en outre pa desande par l'incomplés de sociale dont elle binglicie de la loi nellament des erficies po de l'esté Uniforme offici portunt depublication des repodésque l'implaitions de Récourrement et des Voies d'Emperties et et et la liberte des Estrephies d'Etals

Cue or il a dis ruppole mure que la registe des Membro craco in unem quertiere destruppe des parte de pièrele brit querelles entre la sonièté Antricaine de car les la l'épublique su romp, suite ent dépresons destroines en deten respectives en de car le parte comp.

que le fifie pour la coulèté des Mico distoir impossible une parte de princée une polité ann distairon des factifications describenças et partie pas que la spaisse une polité ann distair le quelles de médiamins

cas la coblet ens nemeno as paurole opiner par estes questina di popular describili.

Obligationes des nemenos partires es la lega partiradad de la color de la co

curelle Callivia, epoaleir que un ecitio marge le justificion electricité cure contract plus en contract de la contract de la

in the production for in Piparilian de Confessioner in Liventeen for pasty de corre des Appendiques de Confessioner de Confess

SUL RUCK SUCH JUST DES EXPERIES

Africale quest, cloudes de l'éffices des proces de docules cons les déficies façificales marginations arout product le marière du private beut Comparate pout pagirol. Thord le lighthation compossine en vigospi

attemps on elect the la lighthings in congress on the southerin hone une person.

ne minist de droit philos

Attempt quell y a lieu de lui (per suplication de dreponitions de l'estique de la lange Uniforme aux les ruelaures manifilles de reconstruction de la lieu (l'estique que la manifille de reconstruction de 1800 de qui dispose que la manifilme de l'estique de la manifil de l'estique de la manifil de l'estique de la manifilme de l'estique de l

Attendo agalement que las disistems judiciaires metricaises dont maiste du pétrole brut Congolais ne sont pas espote exeguatories;

quien effet d'artiele 200 de Gode de Broquiure civile commerciale administrative et linametère (COVCAT) dispens que l'Estantie de des diplometiques contratragles jupocente rendue par les tribunus strangère et les actes reçus par les officiere publics ou ministàrials strangère ne sont susceptibles d'examision our le territoi-

To Congolais qui appes avoir its diclars executoires per une juridiction congolai-

as our sureit ets compatimitariations naturals pour en commuteren;

Attendo en difficitive quill ner a does lieu à opposer à l'Etat congolate tou-

Attendo (galepena que l'article (d de Etiete Uniforme Sur les Imaginares Cir-plistènes de Récourgement et des boies différention(suplants) de l'ambie disposes querles bimis diclerés insulationsables per la les periones de chaque l'ist partie de sont pur macreptioliss de metals alors sons qu'ille servient distants par des

or estendo que les redevances pétrolières sont déclaries insulaissables par la loi Congolates:

Aftends on Affinitive on it tipl do dire out to colois on partie out to colons. An arche public et

de l'estat congristé sol donn régolière se l'acceptant y » lieu de dire que la requise

satisfied an found of a cattle technic out tought could a vitan or total group ?

Aftends guilt y a lieu done to helding persons at aleptanest four the street.

Alleadur que la cholles cut aquen constitue la caquesta en procésa pitt y a llon do retire leachipera d co abarro muciciologia d'ilarifello 37 co

statulat publicaresco, contradictoresembles effected at million designation

delicationit grandicular parties & steer as beingir client detellen so

sale de l'especie le l'organes et in moutelons

repute pay use for figurations do spage on tipes do le corrected de la la corrected.

principal de les districus judictaires apprintants de district applications (crisicales de proposed de la production de la production (consultation) de la production (consultation) de la production (consultation) de la production (consultation) de la principal de la production (consultation) de la principal de la

Constatons que les districre judisiaires Amiricaines ayunt erdonns la leai-nte de patrole brus compolete auns contratres à l'intère public et portent attainte à la souverainete netionale de la Dépublique du côngo:

En conséquence;

Ordennous aux specifie Dus Messee, Muste Congo Company et Muste Congo Limited de livrer à tout Spirateur disigné per le République du Congo les paris de pâtrale brut revenant à le république du Congo ethiopraisent aux dispositions de la convention du 25 Mai 1979y et de la législation en vigueurs

